

Court No. 3
(Ser No 12)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 20 of 2022

Wednesday, this the 25th day of January, 2023

“Hon’ble Mr. Justice Anil Kumar, Member (J)”

“Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

No. 15482643-F, Hav (PA), Babban Chauhan S/o Late Ram Kunwar Chauhan, Presently Posted in Regional Centre, ECHS, Cantonment, Lucknow, U.P.-226010.

..... Applicant

Ld. Counsel for the Applicant : **Shri Manoj Kumar Awasthi**, Advocate.

Versus

1. Union of India, through the Secretary, MoD (Army), South Block, New Delhi-110011.
2. AG’s Branch, ADC PS (PS-3), Room No.-5, Plot No. 108, L Block, IHQ of MoD (Army), DHQ PO, New Delhi – 110011.
3. Controller General of Defence Accounts, Ministry of Defence, Ulan Batar Road, Palam, Delhi Cantt Pin-110010.
4. Officer-in-Charge, Records ASC (South), Bengaluru, PIN-560007, C/o 56 APO.
5. The PAO (ORs), ASC (South), Agram Post, Begaluru-560007.

.....Respondents

Ld. Counsel for the Respondents. : **Ms. Preeti Mala**, Advocate
Central Govt. Counsel

ORDER (Oral)

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (a) *to issue/pass an order to set aside/quash the order dated 20.10.2021 passed by OIC Records /respondent.*
- (b) *to issue/pass an order or directions to the respondents to grant to the applicant herein the same benefit of fixation of basic pay as granted to the Applicant **Hav/PA Kultar Singh Chauhan** in O.A. No. 72 of 2015 decided by AFT Principal Bench on 09.12.2015, and which was implemented by the Government vide their order dated 06.09.2017, and according fix the applicant's basic/minimum pay at Rs 8560/- with effect from 08.02.2006 in terms of SAI-1/S/2008 r/w 6th Central Pay Commission Recommendations as elucidated before;*
- (c) *to issue/pass any order or direction to the Respondents to calculate the monthly salary of the Applicant, including all other emoluments and allowances, on the basis of aforesaid basic/minimum pay and pay the arrears and interest thereon with effect from 08.02.2006 within a period of three months with interests accrued thereon; and*
- (d) *issue/pass any other order or direction as this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, and-*
- (e) *Allow this Original Application with costs.*

2. Counter affidavit filed by Learned Counsel for the respondents is taken on record.

3. The factual matrix on record is that the applicant was enrolled as Sepoy (Clerk) in Group Y in the Indian Army (Armoured Corps) on 07.02.2001. He was re-mustered in Personal Assistant trade in 'X' Group and was promoted as Havildar/PA in Army Service Corps (ASC) w.e.f. 08.02.2006. On 11.10.2008, Government implemented recommendations of 6th CPC by issuing Special Army Instruction 1/S/2008 whereby a revised pay band/pay scale was prescribed for all ranks including the rank of Havildar. The pay of the applicant after implementation of 6th CPC has been fixed to Rs. 7,720/- in the rank of Havildar, however revised minimum pay of Havildars in Group 'X' as per Para 13 of SAI has been fixed to Rs. 8,560/-. Respondents have not given the benefit of re-fixation of minimum pay of Rs. 8,560/- to the applicant. Being aggrieved, the applicant has filed the present Original Application.

4. Learned counsel for the applicant submitted that applicant was re-mustered in Personal Assistant trade in 'X' Group and was promoted as Havildar/PA in Army Service Corps (ASC) w.e.f. 08.02.2006. On 11.10.2008, Central Government implemented recommendations of 6th CPC by issuing Special Army Instruction 1/S/2008 whereby a revised pay band/pay scale was prescribed for all ranks including the rank of Havildar. As per Para 9 (a) (i) of SAI 1/S/2008, pay of PBORs was to be

determined by multiplying their existing basic pay as on 01.01.2006 by the factor of 1.86. Para 13 of SAI 1/S/2008 lays down the minimum entry level pay of various pay bands/ranks/grades of PBORs w.e.f. 01.01.2006 as under :-

Ser. No.	Pay Band	Grade Pay	Basic Pay (In Rs.)	Corresponding Rank
1	PB-1	Rs. 2,000/-	Rs 6,460/-	Sepoy
2	PB-1	Rs. 2,400/-	Rs 7,510/-	Naik
3	PB-1	Rs. 2,800/-	Rs 8,560/-	Havildar
4	PB-2	Rs. 4,200/-	Rs 9,300/-	Naib Subedar
5	PB-2	Rs. 4,600/-	Rs 12,540/-	Subedar
6	PB-2	Rs. 4,800/-	Rs 13,350/-	Subedr Major

5. Learned counsel for the applicant further submitted that pay of the applicant after implementation of 6th CPC, has been fixed to Rs. 7,720/- in the rank of Havildar by applying multiplication formula (Rs. 4,150 x 1.86 = 7,720/-), however revised minimum pay of Havildars under Para 13 of SAI has been fixed to Rs. 8,560/- and, therefore, applicant is also entitled to the benefit of re-fixation of his minimum pay of Rs. 8,560/- in accordance with Para 9 (a) (ii) of SAI 1/S/2008 but respondents have not given the benefit of re-fixation of minimum pay of Rs. 8,560/- to the applicant which is arbitrary.

6. Relying upon order dated 09.12.2015 passed by AFT (PB), New Delhi in OA No. 72 of 2015, **Havildar/PA Kultar Singh Chauhan vs. Union of India & Others**, learned counsel for the applicant submitted that applicant's basic pay be fixed at Rs. 8,560/- w.e.f. 08.02.2006 i.e. w.e.f. the date applicant was re-mustered as Havildar/PA of in 'X' Group and assumed the rank of Havildar on 08.02.2006.

7. On the other hand, learned counsel for the respondents submitted that applicant was enrolled as a Sepoy on 07.02.2001 in Armoured Corps and subsequently he was re-mustered to Army Service Corps (ASC). He further submitted that consequent upon implementation of 6th CPC, pay of the applicant was fixed correctly at Rs. 7,050/- as on 01.01.2006 in the rank of Naik as per Rule 9 of SAI 1/S/2008. The applicant was re-mustered to Group 'X' in the rank of Havildar/PA w.e.f. 08.02.2006. Thereafter, the pay of the applicant as on 01.01.2006 before promotion to the rank of Havildar was Rs. 7,050/-. Accordingly, pay of the applicant has been correctly fixed at Rs. 7,720/- (Band Pay + 2800 (Grade Pay) + 1400 (X Group Pay) as per Rule 14 (b) of SAI 1/S/2008.

8. Learned counsel for the respondents further submitted that Para 13 of SAO 1/S/2008 is regarding entry pay for direct recruitment cases on or after 01.01.2006 and this entry pay is not applicable to the PBORs promoted on or after 01.01.2006 and their pay has to be fixed under

Rule 14 of SAI 1/S/2008 only. Since the applicant was recruited on 07.02.2001 and promoted to the rank of Havildar w.e.f. 08.02.2006, he is not entitled for entry pay of Rs. 8,560/-. He also submitted that benefit of judgment passed by the AFT (PB), New Delhi in **Kultar Singh Chauhan** (supra) case, is restricted to the particular case and Ministry of Defence vide their letter dated 06.09.2017 has clarified that approval in the case of **Kultar Singh Chauhan** (supra) will not be cited as a precedent in any other case, hence benefit of this judgment cannot be extended to the applicant. He pleaded for dismissal of O.A.

9. Heard Shri Manoj Kumar Awasthi, learned counsel for the applicant and Ms Preeti Mala, learned counsel for the respondents and perused the record.

10. We find that applicant's basic pay has been fixed to Rs. 7,050/- as on 01.01.2006 in the rank of Naik as per Rule 9 of SAI 1/S/2008 and on re-mustering to Group 'X' in the rank of Havildar/PA w.e.f. 08.02.2006, his pay has been fixed to Rs. 7,720/- as per Rule 14 (b) of SAI 1/S/2008.

11. On perusal of SAI 1/S/2008, we find that revised pay scales shall be applicable to all those who are on the effective strength of the Army on or after 01.01.2006 but in Para 13, "Entry pay in the revised pay structure for direct recruits" is given and this expression is being read as if it applies to those who have joined on or after 01.01.2006. Para 13 (a)

clearly states that the entry level pay of 'direct recruits' to a particular rank will be fixed on or after 01.01.2006; it connotes that in respect of all those direct recruits to a particular rank carrying specific grade, their pay will be fixed on or after 01.01.2006. It nowhere provides that pay fixation is directly related to the date of entry in service, thus, the stand of the respondents per se is misconceived. Pay Commissions are implemented across-the-board and they are not related to date of entry into service. Therefore, the stand of the respondents, that only those Havildars who are directly appointed on or after 01.01.2006, will be entitled basic of Rs. 8,560/- is misconceived.

12. In view of aforesaid, the applicant is also entitled to the Basic Pay of Rs. 8,560/- (as fixed for direct recruited Havildars as on 01.01.2006) from the date he was re-mustered as Havildar/PA, i.e. w.e.f. 08.02.2006, as per AFT (PB), New Delhi judgment in the case of **Kultar Singh Chauhan** (supra).

13. Resultantly, Original Application is **allowed**. The respondents are directed to revise/re-fix basic pay of the applicant at Rs. 8,560/- w.e.f. 08.02.2006, the date on which applicant was promoted to the rank of Havildar. The respondents are further directed to revise applicant's further pay by granting annual increments on his basic pay of Rs. 8,560/- w.e.f. 08.02.2006 onwards, as per rules. The Respondents are also

directed to comply with the order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% p.a. till actual payment.

14. No order as to costs.

15. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 25 January, 2023
rsp/-